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Applicant : Nikolaus Theres

Art Unit : 1638

Serial No. : 09/403,262

Examiner : Mehta. A.

TECH CENTER 1600/2900

Filed : October 15, 1999

Title : PLANTS WITH CONTROLLED SIDE-SHOOT FORMATION AND/OR  
CONTROLLED ABSCISSION ZONE FORMATION#11 / K.T.  
6/28Commissioner for Patents  
Washington, D.C. 20231

ELECTION

RESPONSE TO RESTRICTION REQUIREMENT

Responsive to the action mailed May 3, 2001, applicant elects the invention of Group I, claims 1-3 and 5-18, and SEQ ID NO:1. The election is made with traverse, because applicant is entitled to have "a reasonable number of such nucleotide sequences to be claimed in a single application" (MPEP 803.04).

As noted in the MPEP, "in *most* cases, up to ten independent and distinct nucleotide sequences will be examined in a single application without restriction" (MPEP 803.04; emphasis added). Here applicant recites only three sequences. Moreover, the MPEP notes that it is only in the "exceptional case" that less than ten sequences will need to be selected (MPEP 803.04). Furthermore, the MPEP points out "[i]f the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, *even though it includes claims to independent or distinct inventions*" (MPEP 803; emphasis added). In addition, in the present case, SEQ ID NOS:1, 3, and 9 are related in that they represent the nucleotide sequences of homologous *Ls* genes in different plants. Accordingly, reconsideration and modification of this restriction requirement, as outlined above, is respectfully requested.

In addition, applicants note that the Examiner has apparently overlooked original claims 19 to 22. Applicant believes that the Examiner reviewed the claims in the certified translation of

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I hereby certify under 37 CFR §1.8(a) that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage on the date indicated below and is addressed to the Commissioner for Patents, Washington, D.C. 20231.

June 1, 2001  
Date of DepositDiane M. Miles  
SignatureDiane M. Miles  
Typed or Printed Name of Person Signing Certificate

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the parent German application, which contains a total of 18 claims rather than the 22 claims in the U.S. application filed on October 15, 1999. In view of the dependent nature of claims 19 to 22, and their relationship to claims 17 and 18 in the translation of the parent application, applicant believes that they are properly included with the claims in Group I.

No fees are believed due. However, please apply any charges or credits to Deposit Account No. 06-1050, referencing Attorney Docket No. 11216-002001.

Respectfully submitted,

Date: June 1, 2001

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